

JUN 21 2016

Div. of Oil, Gas & Mining

**PROGRAMMATIC AGREEMENT
AMONG
BUREAU OF LAND MANAGEMENT, MOAB FIELD OFFICE,
UNITED STATES FOREST SERVICE, MANTI-LA SAL NATIONAL FOREST,
UTAH STATE HISTORIC PRESERVATION OFFICE,
STATE OF UTAH SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION,
UTAH DIVISION OF OIL GAS & MINING,
AND ENERGY FUELS RESOURCES (USA) INC.
REGARDING
A PLAN OF OPERATIONS AMENDMENT TO THE LA SAL MINES
COMPLEX MINE IN SAN JUAN COUNTY, UTAH**

M103710026

WHEREAS, the Bureau of Land Management, BLM Moab Field Office has received a proposed Plan of Operations Amendment (hereafter the "Project") from Energy Fuels Resources (USA) Inc. (hereafter "Energy Fuels") for the La Sal Mines Complex, San Juan County, Utah (Project) on lands administered by the BLM Moab Field Office (BLM), the Manti-La Sal National Forest (USFS), State of Utah School and Institutional Trust Lands Administration (SITLA), and private surface and subsurface minerals overseen by the Utah Division of Oil, Gas and Mining (UDOGM); and

WHEREAS, the La Sal Mines Complex is a group of four existing underground uranium mines: the La Sal Mine, the Pandora Mine, the Beaver Shaft Mine, and the Snowball Mine. The Project includes the construction of exploration drill sites, mine ventilation shafts, access roads, and other surface facilities; and

WHEREAS, the Area of Potential Effect (APE) is defined as the extent of mineral rights owned or leased by Energy Fuels/Energy Fuels Associates within the La Sal Mines Complex, San Juan County, Utah and includes lands administered by the BLM, USFS, SITLA, and UDOGM, agencies within the State of Utah that have a responsibility to comply with 36 CFR 800 or Utah Code Annotated §9-8-404 on lands owned or controlled by such agencies within the project (APE); and

WHEREAS, the APE for individual site-specific actions, such as exploration drill sites, ventilation shafts, access roads, and other surface facilities will require site-specific types of identification, monitoring, evaluation, or mitigation of cultural resources; and

WHEREAS, the BLM Moab Field Office is a federal land management agency responsible for receiving and processing applications for locatable minerals pursuant to 43 CFR 3809, Leasing on Application, and for establishing multiple uses of federal lands in providing for present and future generations as authorized by the Federal Land Policy and Management Act (FLPMA) of 1976 (43 USC 1701 et seq.);

WHEREAS, the BLM Moab Field Office is the lead agency and is a signatory to this agreement; and

WHEREAS, the USFS, is the lead agency responsible for authorizing the development of mineral resources by Energy Fuels on USFS-administered lands, pursuant to 36 CFR 228 as well as the protection of cultural resources as authorized by the Federal Lands Policy and Management Act (FLPMA) of 1976 (43 USC 1701) and is a Signatory to this Agreement; and

WHEREAS, the USFS is a signatory to this agreement; and

WHEREAS, the BLM has consulted with the Utah State Historic Preservation Officer (SHPO) pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. §470f) and 36CFR §800.14(1); and has invited them to participate as a Signatory and they have accepted; and

WHEREAS, the SITLA is the lead agency responsible for authorizing the development of mineral resources by Energy Fuels on SITLA-administered lands, and has the responsibility to comply with Utah Code Annotated §9-8-404 and is an Invited Signatory to this Agreement; and the SITLA intends to employ this Agreement to address the applicable requirements for actions resulting from this Agreement involving SITLA, BLM, and USFS-administered lands. The SITLA, however, does not waive its independent statutory jurisdiction to make final decisions concerning its lands and is not bound in its leasing or other approval authority by actions taken, or determinations made concerning Federal lands, and has therefore been consulted and invited to be an Invited Signatory to this Agreement pursuant to 36 CFR 800.2(c)(3); and

WHEREAS, the SITLA is an Invited Signatory to this agreement; and

WHEREAS, the UDOGM is the lead agency responsible for authorizing development of mineral resources by Energy Fuels on Private and State Lands; and

WHEREAS, the UDOGM, as an agency in the State of Utah that has a responsibility to comply with Utah Code Annotated §9-8-404, intends to employ this Agreement to address the applicable requirements for actions resulting from this Agreement; and

WHEREAS, the UDOGM having permitting authority for the Project for the State of Utah, has been invited to sign this Agreement as an Invited Signatory pursuant to 36 CFR 800.2(c)(3); and

WHEREAS, Energy Fuels has participated in consultation and has been invited to be an invited signatory to this Agreement pursuant to 36 CFR 800.2(c)(4); and

WHEREAS, the Advisory Council on Historic Preservation (ACHP) has elected not to participate in the consultation process for this Project; and

WHEREAS, the BLM has determined that acceptance of a Plan of Operations is an undertaking as defined in 36 CFR 800.16(y); and

WHEREAS, the Signatories have agreed to develop a Programmatic Agreement (here after “Agreement”) for this complex project, pursuant to 36 CFR 800.14(b) because the effect on historic properties cannot be fully determined prior to approval, and because the phased approach adopted by this agreement is a departure from the normal 106 consultation process detailed in 36 CFR 800.1 et seq.; and

WHEREAS, the BLM, in consultation with the Signatories and Consulting Parties, has defined the APE for the Project based on direct, indirect, and cumulative effects to historic properties and their associated settings as applicable, as defined at 36 CFR 800.16(d), to include the areas identified in Appendix A; and

WHEREAS, BLM Moab Field Office and USFS are responsible for government-to-government consultation with federally recognized Indian Tribes for this project and are the lead Federal agencies for all Native American consultation and coordination, and shall continue to consult regarding the potential effects of the Project on historic properties pursuant to 36 CFR 800.2(c)(2); and

WHEREAS, the BLM has invited the Southern Ute Tribe, the Hopi Tribe, The Navajo Nation, The Paiute Indian Tribe of Utah, The Zuni Tribe, The Northern Ute Tribe, The Ute Mountain Ute Tribe, White Mesa Ute Tribe, and Jemez Tribe to be Concurring Parties to this Agreement; and

WHEREAS, the following tribal governments participated in the development of this agreement [To be determined]; and the following tribal governments are concurring parties to this agreement [To be determined]; and

WHEREAS, BLM has invited San Juan County as a local government to be a concurring party under 36 CFR 800.2.(c)(3) and

WHEREAS, BLM has invited the following organizations and individuals to be Concurring Parties: Old Spanish Trail Association, BLM Old Spanish National Historic Trail Administrator, and the National Park Service National Trails Intermountain Region; and

WHEREAS, the following organizations have participated in the development of this agreement: SHPO, USFS, SHPO, Energy Fuels[To be included].... The following organizations and individuals are concurring parties to this agreement [To be included]...; and

WHEREAS, unless otherwise noted, the terms used in this agreement, including “adverse effect,” “area of potential effect,” “historic property,” and “National Register,” are intended to be consistent with the definitions found in federal regulations related to the Protection of Historic Properties at 36 CFR 800.16, regulations for Determinations of Eligibility for Inclusion in the National Register of Historic Places at 36 CFR Part 63, the BLM’s Identifying and Evaluating Cultural Resources Manual (BLM Manual Section-8110), BLMUtah’s Guidelines for Identifying Historic Properties Manual and Handbook (BLMUtah Manual 8110 and Handbook 8110);

NOW, THEREFORE, all of the Signatories and Concurring parties agree that the Project shall be administered in accordance with the following stipulations:

STIPULATIONS

The BLM, USFS, SITLA and UDOGM will ensure that the following stipulations are carried out:

1. Energy Fuels will fund all cultural resource work required under this Agreement, including literature reviews, Class III-pedestrian surveys (Class III surveys), analysis, monitoring, reporting, historic property treatment plan preparation, curation, and mitigation.
2. Energy Fuels will separate proposals for ground-disturbing activities by surface management owner. As a result, the BLM, USFS, and SITLA will be the lead agency on their respective land and will coordinate as necessary with the SHPO. For activities proposed on private land, DOGM will be the lead agency and will coordinate as necessary with the SHPO. The term “Lead Agency” will be used in subsequent sections to identify the federal or state agency that takes the lead in executing the terms of this Agreement. For responsibilities that are unique to the federal or state agencies those agencies will be specified.
3. The agency official will ensure that all identification, evaluation, documentation and preservation efforts to satisfy the terms of this agreement meet the Secretary of the Interior’s Standards and Guidelines for Archeological and Historic Preservation. Furthermore, all efforts will take into consideration the ACHPs *Section 106 Archaeology Guidance* (<http://www.achp.gov/archguide.html>) document and Guidelines for Evaluating and Documenting Traditional Cultural Properties, National Register Bulletin 38.

4. BLMUtah will ensure that all work undertaken to satisfy the terms of this agreement will be conducted or overseen by field office personnel who meet the qualifications established by the Office of Personnel Management for a GS-0193 professional series archaeologist, (i.e., a BLM archaeologist).
5. Identification of historic properties:
 - a. *Literature Review* Prior to any ground disturbing activity on Federal land, the lead agency will conduct a literature review of the proposed activity as defined in the BLM 8110 Manual. The literature review will include a summary of known archaeological inventory and site information, General Land Office Plats and notes, aerial photography, historic records, ethnographic data and expectations for unknown cultural resources and site densities in the activity area.
 - b. *Class III Survey* A Class III survey will be conducted in all portions of the APE where Project activities will result in new ground disturbance. Portions of the APE where Project activities will result in new ground disturbance will not be subject to Class III re-inventory if the area has been inventoried at Class III standards within ten years prior to the execution of this Agreement. Class III inventory will be conducted where necessary inside the APE by archaeologists walking 15-meter wide, parallel transects. Class III inventory will include an analysis of indirect effects to include visual, auditory and atmospheric effects. All prehistoric and historic period archaeological sites identified will be recorded on approved Utah archaeology site forms (IMACS).
6. Reporting
 - a. Upon completion of Class III survey, a Class III Cultural Resources Survey Report will be prepared. This report will describe the cultural resources survey effort as a whole, describe the inventory methods used, provide the results, and make recommendations for the National Register of Historic Places (NRHP) eligibility of all historic localities discovered or revisited.
 - b. Draft Class III Cultural Resources Survey Reports will be submitted to the BLMMoab Field Office, USFS, SITLA and UDOGM. The agencies will have 30 calendar days to provide comments.
 - c. The Lead Agency will provide Concurring Parties with an opportunity to review and comment on Class III Cultural Resources Survey

Reports prior to agency submission to SHPO. These groups will have 30 calendar days to provide comments to the Lead Agency.

- d. Final Class III Cultural Resources Inventory Reports that have comments made by the Lead Agency will be incorporated by the Cultural Resource Consultant to the Lead Agency to support agency decisions regarding National Register of Historic Places eligibility determinations.

7. National Register of Historic Places Eligibility Determinations

- a. The BLM, USFS, or SITLA is responsible for all National Register of Historic Places (NRHP) eligibility determinations for cultural resources on lands under their respective jurisdictions.
- b. The BLM, USFS, or SITLA will evaluate the historic significance of sites within the APE pursuant to 36 CFR 800.4(c).
- c. The BLM, USFS, or SITLA will consult with SHPO regarding their NRHP eligibility determinations for sites within the APE pursuant to 36 CFR 800.4(c).

8. Determination of Effect

- a. The Lead Agency will make a determination of effect consistent with 36 CFR 800.5.
- b. All necessary efforts to avoid historic properties would be made during the planning phases of a particular undertaking. The CR Consultant, in consultation with the Lead Agency, will make recommendations to Energy Fuels on how to best avoid adverse effects to historic properties. These include, but are not limited to, moving drilling site locations, rerouting access corridors and moving construction activities prior to ground disturbance to the extent practicable.
- c.
- d. Avoidance of historic properties means that a minimum 15 meter (49.21 foot) buffer around the site would be established and all surface disturbing activities are prohibited within that buffer.

This buffer would be determined by the Agency Official. If the Agency Official determines that a proposed activity may have adverse effects on historic properties, including any prehistoric or historic district, site, building, structure or object included in, or eligible for

inclusion in the National Register of Historic Places. The Agency Official will also invite and seek tribal and consulting party input to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties in accordance with the standard Section 106 process found at 36 CFR 800.6 and in the National Programmatic Agreement between the Advisory Council on Historic Preservation, BLM and the National Conference of State Historic Preservation Officers. This will be accomplished through a Historic Properties Treatment Plan. Potential actions to resolve adverse effects may include historic research, interpretation, photo documentation, intensive recording, periodic monitoring, and archaeological excavation.

Historic Properties Treatment Plan: After the BLMMoab Field Office has provided Concurring Parties with a draft HPTP or a draft summary of treatment recommendations, the BLMMoab Field Office will hold a meeting with the parties to consult on the treatment recommendations. If any reviewing party fails to submit written comments to the agency official within 30 calendar days after the meeting, the BLMUtah agency official will assume they have no comments regarding the measures identified in the HPTP. The BLMUtah agency official will revise the HPTP, as needed, to address comments from this consultation process.

After the consulting party consultation has been conducted, the HPTP will be submitted to the SHPO. The SHPO will have 30 calendar days from receipt to forward comments to the agency official. The BLMUtah agency official will revise the HPTP, as needed, to address these comments. If the SHPO does not submit written comments within 30 calendar days of receipt of the HPTP, the agency official may assume the SHPO has no comments to the measures identified in the HPTP or objections to the adequacy of the plan.

9. Project Authorization

- a. The Lead Agency may allow Energy Fuels to begin operations in those portions of the APE that do not contain historic properties.
- b. The BLMMoab Field Office may allow Energy Fuels to begin operations in those portions of the APE that do contain historic properties once the agreed upon fieldwork and treatment as specified in the HPTP is completed and approved by the BLMMoab Field Office. The signatory agencies will have 7 days from receipt of adequate documentation that fieldwork and treatment is complete to

comment. Complete results of the treatment effort will be submitted in a report to the agencies within 1 year of completion of field work. The agencies will have 90 days from receipt of this report to review and comment.

10. Post-Review Discoveries

a. If cultural resources are discovered or affected after Energy Fuels has been authorized to proceed with an action, all earth-disturbing activities will cease within 30 meters (100 ft.) of the discovery, and heavy equipment will be removed from the area until the discovery is assessed and documented. If the Lead Agency or the CR Consultant determines that the discovery is an isolated artifact or feature, and determines it is not eligible for NRHP listing, it will be documented and the activity will proceed with no further consultation.

b. Human Remains

b. 1. *Discovery Notifications* - If human remains, potential human remains, associated or unassociated funerary objects, or objects of cultural patrimony are discovered, work within 300 ft. will stop immediately. Verbal notification of the discovery will be made immediately to local law enforcement authorities, the appropriate land management agency official and the Antiquities Section of the Utah Division of State History.

b. 2. *Assessment of Remains* - Human remains discovered on federally managed land will be treated consistent with all requirements of Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations at 43 CFR 10. Human remains discovered on SITLA, State, or privately owned land will be treated consistent with all requirements of applicable Utah State laws regarding the treatment of human remains including Utah Code Annotated (UCA) 76-9-704, UCA 9-8-302, UCA 9-8-309 and UCA 9-9-401 et seq.

b. 3. *Resumption of Work* - Work in the immediate vicinity of the human remains may not resume until after compliance with applicable law is completed. Permission to proceed will come from the Lead Agency after appropriate consultation.

11. Protection of Confidential Information

- a. The Lead Agency shall ensure that all confidential information, as defined in Section 9 of the Archaeological Resources Protection Act (ARPA), Section 304 of the National Historic Preservation Act (NHPA), and Section 63-2-304(26) of the Government Records Access Management Act (GRAMA), is managed in such a way that historic properties, archaeological resources, traditional cultural values, and sacred objects are not compromised to the fullest extent available under law.
- b. All Parties to this Agreement shall safeguard information about the nature and location of archaeological, historic, and traditional cultural properties pursuant to Section 9 of the ARPA, Section 304 of the NHPA, and Section 63-2-304(26) of the GRAMA.

12. Dispute resolution

- a. Should any Signatory to this Agreement object, in writing, at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the BLM shall consult with the objecting party to resolve the concern within 45 days. If the BLM determines that the concern cannot be resolved, the BLM shall:
 - a. 1. Forward all documentation relevant to the dispute, including the BLM's proposed resolution to the ACHP. The ACHP should provide the BLM with its advice on the resolution of the concern within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the BLM shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP or Consulting Parties to this Agreement, and provide them with a copy of this written response. The BLM will then proceed according to its final decision.
 - a. 2. The BLM's responsibility to carry out all other actions subject to the terms of this Agreement that are not subject of the dispute will remain unchanged.
 - a. 3. Any such dispute shall not preclude EF from proceeding with any currently authorized activity or activities approved in the POA, or activities subject to the HPTP required by this PA.

13. Amendments

- a. Any Signatory to this Agreement may request that it be amended, whereupon the Signatories of this Agreement will consult to consider such amendment. An amendment will become effective upon written agreement by all Signatories of this Agreement. Notification of any amendments will be sent to the Consulting Parties.

14. Termination

- a. Any Signatory to this Agreement may terminate it by providing notice in writing within 30 calendar days to the other Signatories, provided that the Signatories can and will consult during the period prior to termination to seek agreement on amendments or other actions that will avoid termination. In the event of termination, the BLM and other Signatories will comply with regulation 36 CFR 800.1 et seq. with regard to individual actions covered by this Agreement. Notification of termination will be sent to the Consulting Parties.

15. Term

- a. This Agreement shall be effective when all Signatories have signed and will remain in effect for 10 years.
- b. The term of this Agreement may be extended another 10 years, not to exceed a total term of 20 years, through written agreement with all Signatories.

In witness whereof, the parties to this Agreement through their duly authorized representatives have executed this Agreement on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement as set forth herein.

The effective date of this Agreement for the PLAN OF OPERATIONS AMENDMENT TO THE LA SAL MINES COMPLEX IN SAN JUAN COUNTY, UTAH is the date of the last Signatory signature affixed to these pages.

Execution of this Agreement by the Signatories and implementation of its terms evidence that the BLM, USFS, SHPO, SITLA, and DOGM have taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES

BUREAU OF LAND MANAGEMENT, MOAB FIELD OFFICE

Beth Ransel
Field Manager

Date

UNITED STATES FOREST SERVICE, MANTI-LA SAL NATIONAL FOREST

Mark Pentecost
Forest Supervisor

Date

UTAH STATE HISTORIC PRESERVATION OFFICER

Brad Westwood
State Historic Preservation Officer

Date

INVITED SIGNATORIES

UTAH SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION

Dave Ure
Director

Date

UTAH DIVISION OF OIL, GAS, AND MINING

John Baza
Director

Date

ENERGY FUELS RESOURCES (USA) INC.

Dave Frydenlund
Senior V.P, General Counsel

Date

CONCURRING PARTIES

SOUTHERN UTE INDIAN TRIBE

Clement Frost
Governor

Date

THE HOPI TRIBE

Herman G. Honanie
Chairman

Date

NAVAJO NATION

Russell Begaye
President

Date

PAIUTE INDIAN TRIBE OF UTAH

Corinna Bow
Chairperson

Date

ZUNI TRIBE

Val Panteah

Date

UTE INDIAN TRIBE OF THE UINTAH OURAY RESERVATION

Gordon Howell
Chairman

Date

UTE MOUNTAIN UTE TRIBE

Manuel Heart
Chairman

Date

WHITE MESA UTE TRIBE

Malcomb Lehi
Council Member

Date

PUEBLO OF JEMEZ

David R. Yepa
Governor

Date

SAN JUAN COUNTY, UTAH

Nick Sandberg
Commissioner

Date

UTAH PUBLIC LANDS POLICY COORDINATION OFFICE (PLPCO)

Kathleen Clarke
Director

Date

OLD SPANISH TRAIL ASSOCIATION

John Hiscock
Association Manager

Date

BLM OLD SPANISH NATIONAL HISTORIC TRAIL ADMINISTRATOR

Robert Sweeten
Administrator

Date

NATIONAL PARK SERVICE, NATIONAL TRAILS INTERMOUNTAIN REGION
OLD SPANISH NATIONAL HISTORIC TRAIL ADMINISTRATOR

Jill Jensen
Administrator

Date

APPENDIX A

PROJECT AREA MAP

